

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

A. SCHULMAN, INC.,	)	
	)	
Plaintiff- Counter-Defendant,	)	Case No. 1:15-cv-1760
	)	
vs.	)	Judge Patricia A. Gaughan
	)	
POLYONE CORPORATION, and	)	
POLYONE DESIGNED STRUCTURES	)	
& SOLUTIONS LLC,	)	
	)	
<u>Defendants-Counter-Plaintiffs.</u>	)	

**Exhibit A**

**ASI'S PROPOSED CONSTRUCTIONS OF DISPUTED CLAIM TERMS AND  
IDENTIFICATION OF INTRINSIC AND EXTRINSIC EVIDENCE IN SUPPORT**

**I. Definition of Person of Ordinary Skill in the Art (unrebutted)**

**ASI's Proposed Construction:** A POSA would understand that “passes a gravelometer impact test per the GM9508P standard, with a 10 pt load at a -30° C. temperature, and at an angle of 30 degrees” would mean “has a score of 7 or greater per the scoring system of the GM9508P standard with no cracking or delamination.” A POSA would also understand that only chips counted for purposes of computing the score, and that mars, which are the subject of a separate GM standard, GM9150P, are not counted.

**Intrinsic Evidence**

JX 5(c) (Smith Decl.), JA007695-96, ¶¶2, 4.

**Extrinsic Evidence**

PX 1 (Coughlin Decl.), ¶ 7.

**II. “passes a gravelometer impact test per the GM9508P standard, with a 10 pt load at a -30° C. temperature, and at an angle of 30 degrees”**

**ASI's Proposed Construction:** A POSA would understand that “passes a gravelometer impact test per the GM9508P standard, with a 10 pt load at a -30° C. temperature, and at an angle of 30 degrees” would mean “has a score of 7 or greater per the scoring system of the GM9508P standard with no cracking or delamination.” A POSA would also understand that only chips counted for purposes of computing the score, and that mars, which are the subject of a separate GM standard, GM9150P, are not counted.

**Intrinsic Evidence**

JX 1 ('902 patent), JA000002 (Fig. 1); JA000006, col. 1, lines 25-35 and 60-62, col. 2, lines 17-19; JA000011, col. 12, lines 16-20 (referring to GMW3943 standard for marring); JA000016-17, col. 22, lines 16-19, Table 2 (cols. 23-24) (providing definition of “passes” and referring to GMW3943 scratch & mar test); JA000019, col. 27 lines 37-39 (claim 1); JA000020, col. 30, lines 13-23 (claim 36).

JX 2, JA000039, col. 28, lines 54-63 (claim 39).

JX 5(a) (GM4348M), JA007185-86 (defining appearance zones), JA007189 (requirement and definition of “chips”).

JX 5(b) (GM9508P) (GM standard for chip resistance of coatings), JA7659-60 (¶¶ 1, 1.1 (instructing user to evaluate chip resistance of coatings and referring the user to GM4348M); ¶¶ 3.1, 3.4, 3.4.3 (referring to GM4348M and SAEJ400 and describing general parameters for running gravelometer test, and referring to “chip rating standards”); ¶ 5.2.2 (referring to preparation of sample); ¶¶ 5.3.1, 5.3.4 (referring to manner of conducting the test); JA7669, ¶ 6 (instructing user to “determine the degree of chipping”).

JX 5(c) (Smith Decl., Reexam.), JA0007695-96 (education and experience), JA00770-01, ¶¶ 20-23 (referring to gravelometer test).

**Extrinsic Evidence**

PX 1 (Coughlin Decl.), ¶ 7 (description of person of ordinary skill in the art).

PX 2 (Baghdachi Decl.), ¶¶ 14, 16.

PX 3 (description of qualification of examiners in USPTO central reexamination unit)

PX 4 (SAE J400) (referred to in GM9508P and describing general structure of gravelometer machine).

PX9 (GMW 14650, August 2006 edition) at 2, ¶ 3.5.2 (referring to GM9508P), ¶ 3.5.3 (requiring that damage from marring be measured by the “5 Finger Scratch test per GMN3943”).

PX 10 (Leggat Dep.), 14:3-15:5; 82:20-83:17.

PX 12 (Rebuttal Declaration of Jamil Baghdachi), ¶ 5 (citing PX 9), ¶ 11.

PX 15 (GMW14650, September 2016 edition).

**III. ASI'S PROPOSED CONSTRUCTION OF "a DOI of 70 or greater" or "a DOI of 85 or greater"**

**ASI's Proposed Construction:** "DOI" means "distinctiveness of image, a measure of how clearly an object is reflected by a surface." A POSA would understand, given the patent specification, that DOI is determined by measurement using any of the approved DOI measurement instruments listed in GM 4348M section 3.1.5.

**Intrinsic Evidence**

JX 1 ('902 patent), JA000001 (Abstract), JA000006, col. 1, lines 61-65, col. 2, line 18, col 2, line 37; col. 2, line 49, JA000020, col. 29, lines 13-23 (claim 36).

JX 2, JA000039, col. 28, lines 54-63 (claim 39).

JX 3 (prosecution history), JA002281, JA002362, JA002499, JA002537.

JX 5 (reexamination prosecution history).

JX 5(a) (GM4348M), JA007185, ¶ 1.1; JA000086, ¶ 3.1.5 (listing four specific instruments approved by GM for measuring DOI), JA007187 (showing different zones); JA007190 (listing DOI standard for Zones A, B and C); JA007185-96 (entire document).

JX 5(b) (GM9508P), JA007659, ¶ 1.1 (referring user to GM4348M to determine whether to use Method A or Method B).

JX 5, JA007676 (U.S. Pat. No. 6,509,964, cited in reexam prosecution history (JA007671-82)).

JX 5(c) (Smith reexam declaration), JA007697-98, ¶ 10.

JX 5(d) (Coughlin reexam declaration), JA7704-10.

JX 5(e) (ASI response to reexam office action), JA007745 (defining DOI limitation).

JX 5(f) (Reexam office action), JA006855-58.

JX 5(g), (Notice of intent to issue reexam certificate), JA007792-97.

JX 5(h) (Request for ex parte reexamination), JA003141, JA3153.

**Extrinsic Evidence**

PX 1 (Coughlin Decl.), ¶ 7 (description of person of ordinary skill in the art).

PX 2 (Baghdachi Declaration).

PX 3 (description of qualification of examiners in USPTO central reexamination unit)

PX 10 (Leggat Dep.), Tr. at 48, lines 17-19.

PX 12 (Baghdachi Rebuttal Declaration).

#### **IV. ASI's Proposed Construction of "random microstructure"**

**ASI's Proposed Construction:** A polyolefin backing layer with a "random microstructure" is a layer primarily composing one or more polyolefins that are not block copolymers, and in which the mer units (the portion of a polymer derived from a single reactant molecule) do not form blocks and, instead, are incorporated in an essentially non-repeating manner.

##### **Intrinsic Evidence**

JX 1 ('902 patent), JA000009, col. 7, lines 33-52; JA000010, col. 9, line 59 through col. 10, line 5; JA000019, col. 29, lines 13-15.

##### **Extrinsic Evidence**

Coughlin Decl., ¶8, ¶12, ¶15 (citing PX 13, U.S. Patent No. 9,133,290, col. 3, lines 6-8 (mer unit), col. 4, lines 55-58 (defining random microstructure)).

PX 6 and PX 14 (US 2007/0293622 to Yan), ¶0014 (mer unit) ¶0025 (random microstructure).

PX 7 (US 2007/0225431), ¶92.

PX 13 (U.S. Pat. No. 9,133,290).

**V. ASI's construction of "clear polyolefin layer"**

**ASI's Proposed Construction:** A POSA would understand that a "clear polyolefin layer has a light transmittance of 85% or greater, a haze of 10 or less."

**Intrinsic Evidence**

JX 1, JA000008, col. 5, lines 38-44 ("[t]he clear layer 3 should have a light transmittance of 85-100%, such as 88-100% or 90-100%. It should also have a haze of not greater than 10%, such as no greater than 8%, no greater than 5%, no greater than 2.5%, or no greater than 1.0%. For certain applications, it may be desirable to include a small amount of pigment or special effects in the clear layer 3.").

**Extrinsic Evidence**

PX 1 (Coughlin Decl.), ¶ 13.

**VI. ASI's Construction of "colored polyolefin layer."**

**ASI's Proposed Construction:** Plain and ordinary meaning.

**Intrinsic Evidence**

JX 1 (JA000008), col. 6, line 23 ("the color layer contains pigment"); JA000010 col. 10, lines 37-39 ("carrier resins may also be used to incorporate the pigment and/or effect materials into the colored backing layer").

**Extrinsic Evidence**

PX 1 (Coughlin Decl.), ¶ 14.



Dated: March 20, 2017

Respectfully submitted,

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